

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the
Expedited Rate Appeal of
Lake Crystal Health Care Center
Provider No. 002 0344

DECISION

The above entitled matter came on before Administrative Law judge Peter C. Erickson without a hearing pursuant to the expedited rate appeal process set out Minn. Stat. 256B.50, subd. id. (1988).

Written argument was filed on behalf of Summit Manor Health Care Center ("the Provider") by Thomas L. Skorczeski, of Broeker, Geer, Fletcher & LaFond, Ltd., Attorneys at Law, 8500 Normandale Lake Boulevard, Suite 1510, Minneapolis, Minnesota 55437. Written argument was filed on behalf of the Department of Human Services by Melane A. Milbert, Staff Attorney, Provider Appeal Division, Department of Human Services, 444 Lafayette Road, Fifth Floor, St. Paul, Minnesota 55155 3841. The final written submission was received on February 6, 1989 on which date the record closed.

Pursuant to Minn. Stat. 256B.50, subd. Id. (d), this decision is the final administrative decision and is not appealable.

STATEMENT OF ISSUE

Should the Provider's bus transportation expenses of \$2,731.00 to enable residents to attend recreational and social activities be included in the "Other care related services" cost category rather than "General and administrative services."

DISCUSSION

The Department argues that because "travel expenses" are specifically enumerated in the statutory and rule categorization or -general and administrative costs", and there is no mention of travel expenses in the "Other care related services" category, the costs at issue herein must be classified as general and administrative services expenses. The provider argues that the bus transportation expenses were incurred to provide the residents' transportation to social and recreational activities outside of the nursing facility. consequently, argues that those expenses are the direct cost of recreational activities within the meaning of Subp. 6 of Rule 9549.0040. The Judge agrees .

The Department has taken a mechanical approach to the interpretation and implementation of the rules at issue herein. its argument that because the words "travel expenses" appear in Subp. 7 and are not included in subp. 6, travel costs cannot be included as care related services, is a "form over substance" argument. See, *pioneer Nursing Home v. DHS*, ruling on Motion for Partial Summary Disposition (HS 88 049 PE, 4 1800 2035 2, ruling issued May 13, 1988). Both Subp. 7 of Minn. Rule 9549.0040 and the definition of general and administrative costs contained in Minn. Stat. 256B.421, subd. 5, categorize "costs for administering the facility". (Emphasis added). Examples of those costs set forth in rule and statute show clearly that the type of expenses intended to fall within the general and administrative category are expenses not directly related to resident care. Subp. 6 of Minn. Rule 9549.0040 states clearly that "other care related services" do include the direct costs of care related activities. in this case, transportation expenses for residents to participate in recreational activities are care related direct costs.1

The Department cites in the Matter of the Contested Case of *Ebenezer Society et. al. v. Minnesota Department of Human Services*. cl 88.1384 (Minn. Court of Appeals, December 13 1988) in support of its argument that all "travel costs" must be included in general and administrative services. In that case, the Court considered evidence of a "long standing practice" by the Department as a basis for proper rule interpretation. The Department has not asserted that there is a long standing practice of classifying all resident travel costs for recreational activities as general and Administrative expenses. The judge has concluded, after examination of the full text of both rules and the statute, that the costs at issue are direct costs of care related recreational activities within the meaning of Minn. Rule 9549.0040, Subp. 6

DECISION

The appeal of the Provider is GRANTED. The Department of Human Services is ordered to re classify the bus transportation expenses of \$2,731.00 as "Other care related services".

Dated: February 1989.

PETER C. ERICKSON
Administrative Law Judge

1/ In the case of In the Matter of the expedited Rate appeal of
Surf
And Sand, Inc., Decision (4-1800-2967-8 ruling issued January 24,
1989),

the under signed Administrative Law judge has already ruled on the identical issue presented herein. The arguments and facts of the case now being considered are on all fours with Surf and Sand. In both Surf and Sand and this case, the expenses claimed were costs to hire outside transportation services. not costs to run facility owned vehicles to transport residents.